

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRYAN S. CONWAY,)	4:07CV3066
)	
Plaintiff,)	MEMORANDUM
vs.)	AND ORDER
)	
BURLINGTON NORTHERN)	
SANTA FE RAILROAD COMPANY,)	
)	
Defendant.)	

On October 5, 2007, the court entered a memorandum and order granting the plaintiff an 11-day enlargement of time, until November 2, 2007, to respond to the defendant's partial motion for summary judgment. The plaintiff filed a timely brief in opposition to the summary judgment motion on November 1, 2007, but the brief did not include a response to the plaintiff's statement of material facts, as required by our local rules. *See* NECivR 56.1(b)(1).¹

However, in a separate motion also filed on November 1, 2007, the plaintiff requested an additional enlargement of time, until November 29, 2007, to respond to the defendant's statement of material facts. The defendant opposes the request for a variety of reasons, including the plaintiff's failure to submit affidavits showing the need for a continuance. *See* Fed. R. Civ. P. 56(f).

¹ The rule provides: "The party opposing a motion for summary judgment shall include in its brief a concise response to the moving party's statement of material facts. The response shall address each numbered paragraph in the movant's statement and, in the case of any disagreement, contain pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials upon which the opposing party relies. Properly referenced material facts in the movant's statement will be deemed admitted unless controverted by the opposing party's response." NECivR 56.1(b)(1) (emphasis in original).

The plaintiff's counsel represents that the additional time is needed to obtain an expert's report, which is not due until November 19, 2007, and also the transcript of a deposition. Significantly, it does not appear that the defendant will be prejudiced if the requested enlargement of time is granted.²

IT IS THEREFORE ORDERED that:

1. The plaintiff's motion for enlargement of time (filing 40) is granted, and the plaintiff shall have until November 29, 2007, to respond to the defendant's statement of material facts.
2. The defendant's motion to stay (filing 42) is granted, and the defendant shall have five business days after service of the plaintiff's response to the defendant's statement of material facts in which to file a reply.

November 14, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

² The defendant has also filed a "motion to stay" the filing its reply pending disposition of the plaintiff's motion for enlargement of time.